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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,119	10/30/2000	Gunter Halmshlager	P19790	3782

7055 7590 05/13/2002

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EXAMINER

FORTUNA, JOSE A

ART UNIT PAPER NUMBER

1731


DATE MAILED: 05/13/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

MF=14

Advisory Action

Application No. 09/646,119	Applicant(s) Halmschlager et al.	
Examiner José A. Fortuna	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Apr 25, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).


Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see NOTE below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

- 3. Applicant's reply has overcome the following rejection(s):

- 4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attachment.
- 6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 46-97
Claim(s) withdrawn from consideration: _____
- 8. The proposed drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.
- 9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 10. Other: _____


JOSE A. FORTUNA
 PRIMARY EXAMINER
 ART UNIT 1731

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ATTACHMENT TO ADVISORY ACTION

Applicant arguments are not convincing for the following reasons:

1) Turner discloses gap formers. Note that as defined by the "Handbook for Pulp & Paper Technologist," by Gary A. Smook second edition, (attached) a gap former is a twin wire machine having blade in the surfaces of the wires, (Blade Former), or roll(s) for the dewatering of the web, (Roll Former). As Turner shows the use of twin wires, having blades on the surface of the wires, and combination of twin wire(s) of such wires and Fourdrinier machines, this limitation is met.

2) Turner teaches the surface distribution of the fines and it is well known that the concentration, amount, of fines is greater at the felt side of the wire, see Casey, attached. Turner clearly teaches in one embodiment that the plies are jointed by the surfaces having more fines, (it is well known, see Casey, that fines contribute to the bonding strength). Therefore, one of the surfaces has to have more fines than the other. Also the sidedness, i.e., the difference of concentration of fines in one of the surfaces of a papermaking web, is not completely eliminated even if the web is dewatered from both surfaces.

3) The Systems shown by the references have all the structural limitations as claimed since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Also, a recitation of the intended use of the claimed invention must

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result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). **Note that no structure and/or manipulative steps have been recited in the claims to obtain the fines distribution as claimed.**


1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to José Fortuna, whose telephone number is (703)305-7498. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman, can be reached on (703)308-3837. The fax number for this group is (703)305-7115.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0661.

When filing a FAX in group 1730, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

José A. Fortuna
May 10, 2002


JOSE FORTUNA
PRIMARY EXAMINER
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